

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 637** Session of
2011

INTRODUCED BY WARD, BREWSTER, SCARNATI, McILHINNEY,
EICHELBERGER, D. WHITE, VOGEL, RAFFERTY, BRUBAKER, ORIE,
FONTANA, ALLOWAY, GREENLEAF, WAUGH, ARGALL, PICCOLA AND
WASHINGTON, FEBRUARY 24, 2011

SENATOR McILHINNEY, STATE GOVERNMENT, AS AMENDED, APRIL 6, 2011

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated
2 Statutes, in contracts for public works, providing for
3 verification of the employment eligibility of all employees
4 for purposes of wage reporting and employment eligibility;
5 prescribing penalties; and establishing good faith immunity
6 under certain circumstances.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Chapter 39 of Title 62 of the Pennsylvania
10 Consolidated Statutes is amended by adding a subchapter to read:

11 SUBCHAPTER F

12 EMPLOYMENT VERIFICATION

13 Sec.

14 3951. Scope of subchapter.

15 3952. Definitions.

16 3953. Verification.

17 3954. Violations.

18 3955. Enforcement and sanctions.

19 3956. Protection from retaliation.

1 3957. Good faith immunity.

2 § 3951. Scope of subchapter.

3 This subchapter relates to verification of employment on
4 certain public works projects.

5 § 3952. Definitions.

6 The following words and phrases when used in this subchapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Department." The Department of Labor and Industry of the
10 Commonwealth.

11 "Employee." An individual for whom a public works contractor
12 is required by law to file a Form W-2 with the Internal Revenue
13 Service.

14 "EVP." The E-Verify Program operated by the Department of
15 Homeland Security that electronically verifies employment
16 eligibility for employees.

17 "INA." The Immigration and Nationality Act (66 Stat. 163, 8
18 U.S.C. § 1101 et seq.).

19 "NVS." The Social Security Number Verification Service
20 operated by the Social Security Administration.

21 "Public body." The Commonwealth of Pennsylvania, any of its
22 political subdivisions, any authority created by the General
23 Assembly of the Commonwealth and any instrumentality or agency
24 of the Commonwealth.

25 "Public work." Construction, reconstruction, demolition,
26 alteration and repair work other than maintenance work, done
27 under contract and paid for in whole or in part out of the funds
28 of a public body where the estimated cost of the total project
29 is in excess of \$25,000. The term shall not include work
30 performed under a rehabilitation or manpower training program.

1 "Public works contractor." A contractor that provides goods
2 or services under a contract involving a public works project.

3 "Public works project." A project involving a public work.

4 "Secretary." The Secretary of Labor and Industry of the
5 Commonwealth.

6 "Subcontractor." A person, other than a natural person,
7 regardless of its tier, including, but not limited to, a
8 staffing agency, that performs work for a public works
9 contractor under a contract for a public work.

10 "Willful." Action or conduct undertaken intentionally or
11 with reckless disregard for or deliberate ignorance of the
12 requirements and obligations established by this subchapter.

13 § 3953. Verification.

14 (a) General rule.--As a precondition of being awarded a
15 contract for a public work, and prior to the execution of the
16 contract, a public works contractor shall provide the
17 Commonwealth agency with which the contract will be made a
18 verification statement in which it shall represent the
19 following:

20 (1) The public works contractor has verified the
21 employment eligibility of all of its then-existing employees
22 for wage reporting purposes through NVS in accordance with
23 Federal law governing the use of NVS.

24 (2) The public works contractor will verify the
25 employment eligibility of a new employee for employment
26 purposes prior to the commencement of work by the new
27 employee through EVP in accordance with Federal law governing
28 the use of EVP.

29 (3) The public works contractor will provide the
30 Commonwealth agency with the verification statement required

1 under subsection (b) from each subcontractor it uses or
2 intends to use on the public works project prior to the
3 commencement of any work by the subcontractor on the public
4 works project.

5 (4) The public works contractor will provide a
6 certification from the department verifying that the
7 contractor has not previously violated this subchapter.

8 (b) Subcontractor verification statements.--Prior to the
9 execution of a subcontract with a public works contractor, a
10 subcontractor shall provide the public works contractor with a
11 verification statement containing substantially the same
12 information about the subcontractor as required under subsection
13 (a) about the public works contractor. The subcontractor shall
14 submit the verification statement to the contractor prior to the
15 commencement of any work by the subcontractor on the public
16 works project.

17 (c) Form.--The verification statement required by this
18 section shall be on a form prescribed by the secretary and shall
19 comply with the following additional requirements:

20 (1) The statement shall include a certification that the
21 information in the statement is true and correct and that the
22 person signing the statement understands that the submission
23 of false or misleading information in connection with the
24 verification shall subject the person and the public works
25 contractor or subcontractor, as the case may be, to sanctions
26 provided by law.

27 (2) The statement shall be signed by a representative of
28 the public works contractor or subcontractor, as applicable,
29 who has sufficient knowledge and authority to make the
30 representations and certifications contained in the

1 statement.

2 (d) Discrimination prohibited.--In conducting the employment
3 eligibility required by this section, a public works contractor
4 or its subcontractor shall not discriminate against any employee
5 on the basis of race, ethnicity, color or national origin.

6 § 3954. Violations.

7 The following shall constitute a violation of this
8 subchapter:

9 (1) Employment by a public works contractor or
10 subcontractor of an employee whose employment eligibility has
11 not been verified by NVS or EVP as required by this
12 subchapter.

13 (2) Use by a public works contractor of a subcontractor
14 on a public works project prior to the submission by the
15 subcontractor of a verification statement required by this
16 subchapter.

17 (3) Commencement of work by a subcontractor on a public
18 works project prior to submitting to the public works
19 contractor a verification statement required by this
20 subchapter.

21 (4) Making a false statement or misrepresentation in a
22 verification statement required by this subchapter.

23 § 3955. Enforcement and sanctions.

24 (a) General rule.--The secretary shall enforce the
25 provisions of this subchapter.

26 (b) Investigation of complaints.--The secretary shall
27 accept, review and investigate in a timely manner any credible
28 complaint that a public works contractor or subcontractor has
29 violated a provision of this subchapter.

30 (c) Audits.--To ensure compliance with the requirements of

1 this subchapter, the secretary shall conduct complaint-based and
2 random audits of public works contractors and subcontractors in
3 this Commonwealth. In conducting such audits, the secretary
4 shall utilize NVS and EVP to verify the employment eligibility
5 of employees for wage reporting purposes and employment
6 eligibility, as appropriate, in accordance with Federal law
7 governing the use of NVS and EVP.

8 (d) Sanctions.--The following sanctions shall apply to ←
9 violations of section 724A of the INA (8 U.S.C. § 1324a) or of
10 this act:

11 (1) A public works contractor or subcontractor that
12 violates section 724A of the INA or engages in violations
13 described in section 3954(1), (2) or (3) (relating to
14 violations):

15 (i) For the first offense, the secretary may issue a
16 warning letter detailing the violation and post the
17 letter on the department's Internet website.

18 (ii) At the discretion of the Commonwealth agency
19 with whom the public works contractor has contracted, may
20 be subject to termination of the contract by the
21 Commonwealth agency without recourse against or penalty
22 to the Commonwealth agency. The right of the Commonwealth
23 agency to terminate the contract under this subparagraph
24 may not be waived.

25 (iii) At the discretion of the public works
26 contractor with whom the subcontractor has contracted,
27 may be subject to termination of the subcontract by the
28 public works contractor without recourse against or
29 penalty to the public works contractor. The right of the
30 public works contractor to terminate the subcontract

~~under this subparagraph may not be waived.~~

~~(2) A public works contractor or subcontractor that willfully violates section 724A 274A of the INA (8 U.S.C. § 1324A) or willfully engages in violations described in section 3954(1), (2) or (3):~~

~~(i) At the discretion of the secretary, shall be subject to debarment under section 531 for one year.~~

~~(ii) At the discretion of the Commonwealth agency with which the public works contractor has contracted, may be subject to termination of the contract by the Commonwealth agency without recourse against or penalty to the Commonwealth agency and a fine of up to \$2,000. The right of the Commonwealth agency to terminate the contract under this subparagraph may not be waived.~~

~~(iii) At the discretion of the public works contractor with whom the subcontractor has contracted, may be subject to termination of the subcontract by the public works contractor without recourse against or penalty to the public works contractor. The right of the public works contractor to terminate the subcontract under this subparagraph may not be waived.~~

~~(1) FOR A FIRST OFFENSE RELATING TO THE PUBLIC CONTRACT, A WARNING LETTER MAY BE ISSUED BY THE SECRETARY DETAILING THE VIOLATION. THE LETTER SHALL BE POSTED ON THE DEPARTMENT'S INTERNET WEBSITE.~~

~~(2) FOR A SECOND OFFENSE RELATING TO THE PUBLIC CONTRACT:~~

~~(I) AT THE DISCRETION OF THE COMMONWEALTH AGENCY WITH WHICH THE PUBLIC WORKS CONTRACTOR HAS CONTRACTED, MAY BE SUBJECT TO TERMINATION OF THE CONTRACT BY THE~~

1 COMMONWEALTH AGENCY WITHOUT RECOURSE AGAINST OR PENALTY
2 TO THE COMMONWEALTH AGENCY AND A FINE OF UP TO \$2,000.
3 THE RIGHT OF THE COMMONWEALTH AGENCY TO TERMINATE THE
4 CONTRACT UNDER THIS SUBPARAGRAPH MAY NOT BE WAIVED.

5 (II) AT THE DISCRETION OF THE PUBLIC WORKS
6 CONTRACTOR WITH WHOM THE SUBCONTRACTOR HAS CONTRACTED,
7 MAY BE SUBJECT TO TERMINATION OF THE SUBCONTRACT BY THE
8 PUBLIC WORKS CONTRACTOR WITHOUT RECOURSE AGAINST OR
9 PENALTY TO THE PUBLIC WORKS CONTRACTOR. THE RIGHT OF THE
10 PUBLIC WORKS CONTRACTOR TO TERMINATE THE SUBCONTRACT
11 UNDER THIS SUBPARAGRAPH MAY NOT BE WAIVED.

12 (3) FOR A THIRD OR SUBSEQUENT OFFENSE RELATING TO THE
13 PUBLIC CONTRACT, AT THE DISCRETION OF THE SECRETARY, IN
14 ADDITION TO THE SANCTIONS IN PARAGRAPH (2), SHALL BE SUBJECT
15 TO DEBARMENT UNDER SECTION 531 (RELATING TO DEBARMENT OR
16 SUSPENSION) FOR ONE YEAR.

17 § 3956. Protection from retaliation.

18 (a) General rule.--It shall be unlawful for a public works
19 contractor or subcontractor to discharge, threaten or otherwise
20 retaliate or discriminate against an employee regarding
21 compensation or other terms or conditions of employment because
22 the employee:

23 (1) participates in an investigation, hearing or inquiry
24 held by the secretary or any other governmental authority
25 under this subchapter; or

26 (2) reports or makes a complaint regarding the violation
27 of this subchapter to a public works contractor,
28 subcontractor or governmental authority.

29 (b) Actions.--

30 (1) Any employee who suffers retaliation or

1 discrimination in violation of this section may bring an
2 action in a court of common pleas in accordance with
3 established civil procedures of this Commonwealth.

4 (2) The action must be brought within three years from
5 the date the employee knew of the retaliation or
6 discrimination.

7 (c) Relief.--If an employee prevails in an action commenced
8 under this section, the employee shall be entitled to the
9 following relief:

10 (1) Reinstatement of the employee, if applicable.

11 (2) Restitution equal to three times the amount of the
12 employee's wages and fringe benefits calculated from the date
13 of the violation or discrimination.

14 (3) Reasonable attorney fees and costs of the action.

15 (4) Any other legal and equitable relief as the court
16 deems appropriate.

17 § 3957. Good faith immunity.

18 A public works contractor or subcontractor that relies in
19 good faith on NVS and EVP procedures to verify the employment
20 eligibility of employees shall be immune from the sanctions
21 authorized under section 3955 (relating to enforcement and
22 sanctions) in the event that incorrect information has been
23 provided to the public works contractor or subcontractor.

24 Section 2. This act shall take effect in 60 days.